

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SHIA SAIDE LABEOUF and SHAYNA SAIDE,

Index No.: 651878/2013

Plaintiffs,

-against-

BARRY SAIDE,

Defendant.

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STATE OF NEW YORK :
SS :
COUNTY OF NEW YORK :

**DEFENDANT'S AFFIDAVIT
IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT
IN LIEU OF COMPLAINT**

BARRY SAIDE, being duly sworn, deposes and says:

1. I am the defendant in this action and I am fully familiar with the facts hereinafter set forth, based upon my personal knowledge of same. I submit this affidavit in opposition to the motion for summary judgment in lieu of complaint (the "Motion"), brought by plaintiffs, Shia Saide LaBeouf ("Shia") and Shayna Saide ("Saide")(together, "Plaintiffs").
2. It is respectfully submitted that the subject matter of this action is a private, family dispute and should not have been elevated to a dispute requiring judicial intervention.
3. In August, 2009, I executed the document annexed as Exhibit A to the Motion, *i.e.*: "Promissory Installment Note - Payments of Principal Plus Accrued Interest on Unpaid Balance" ("Exhibit A"). I have been the owner of a staffing agency in New York for over thirty (30) years, and have obtained employment for thousands of people in all walks of life. The recession which started 2008 caused a dramatic downturn in the labor employment market. I borrowed the money in light of the long history of my having provided financial support to my sister, Shayne, and her son – my nephew – Shia, when they needed it.

4. Shayne and Shia were aware of the reason I asked for the loan. Indeed, Shia loaned me the money without hesitation, and stated to me words to the effect that we were family and that he “had more money than [he] could ever need”.
5. Shia is a well known and very successful film actor. He has been a television star since 1999, and is now among the cinema’s most highly paid performers. According to the Internet Movie Data Base (<http://www.imdb.com/name/nm0479471/bio>) he earned \$5,000,000 for *Transformers: Revenge of the Fallen*, \$8,000,000 for *Wall Street: Money Never Sleeps* and \$15,000,000 for *Transformers: Dark of the Moon*.
6. However, prior to Shia’s ascendancy to film stardom, and Shia’s concomitant ability to support Shayne, I loaned Shayne hundreds of thousands of dollars to assist in the support of Shayne and Shia. I never sought repayment of this money; Shayne, Shia and I are family.
7. Shayne and I grew up together in very modest means on the Lower East Side. Shayne separated from her husband soon after Shia was born in 1986, and has been divorced for many years. Shayne’s work history could best be described as itinerant; among other things, she made and designed jewelry, but she never achieved any lasting financial success.
8. The purpose of Exhibit A was to memorialize the fact of the loan and the amount due and never in my wildest imagination would I have thought it would provide a pre-text for Shayne and Shia to enter judgment against me, at once, in excess of \$800,000.00. Had I thought that Shayne and Shia would take this extraordinary step, and seek to impoverish me, I never would have borrowed a dollar from Shia.

9. Plaintiffs have commenced this action, and brought their Motion, pursuant to § 3213¹ of the New York Civil Practice Law and Rules (“CPLR”), based on the theory that the Exhibit A, notwithstanding its bearing a title stating: “Promissory Installment Note - Payments of Principal Plus Accrued Interest on Unpaid Balance” (“Exhibit A”) is “an instrument for the payment of money only”.
10. However, Exhibit A, although specifying a debt and a payment schedule, is not “an instrument for the payment of money only”, as is shown by its very terms. It contains a provision which specifically allows me, at my sole discretion, to avoid any obligation to make a payment of money to Plaintiffs.
- “It is Borrower’s intention and the parties agree that Borrower may, in his sole discretion, satisfy the entire loan amount by transferring title to the security to the Lender in full satisfaction in lieu of cash payments. The parties shall cooperate with each other in good faith to effectuate such transfer of title as soon as practicable.”
11. Thus, notwithstanding any facts which may or may not have transpired – and which necessarily must be the subject of testimony outside of an allegation of failure to pay the amount allegedly due under the alleged instrument – Exhibit A is not an unconditional promise to pay which may form the basis for a motion for summary judgment in lieu of complaint pursuant to CPLR § 3213. Indeed, the language of Exhibit A provides specifically that there is an alternative to the payment of money only, namely the security identified elsewhere in Exhibit A.

¹ CPLR § 3213 provides, *inter alia*: “When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise.”

12. Thus, notwithstanding any alleged default in making the payments due pursuant to the schedule set forth in Exhibit A, Plaintiffs may only commence an action at law, but Plaintiffs are not entitled to relief pursuant to CPLR § 3213.

13. Finally, to the extent that CPLR § 3213 provides “If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise” (*see*, Footnote 1), I respectfully request that any Order which may be entered denying the Motion also provide that I may serve an Answer, as a pleading separate and distinct from this affidavit in opposition to the Motion.

WHEREFORE, defendant respectfully requests that the Motion be dismissed, and that the Court provide that defendant may serve an Answer, as a pleading separate and distinct from this affidavit in opposition to the Motion, and that the Court grant to defendant such other relief as the Court deems just.

S/ Barry Saide
BARRY SAIDE

Sworn to before me this
30th day of July, 2013

S/Samuel E. Kramer
Notary Public

Samuel E. Kramer
Notary Public, State of New York
No. 24KR4795609
Qualified in Nassau County
Commission Expires February 28. 2014